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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

JENNIFER GAXIOLA AGUAYO,

Plaintiff,

VS.

WALMART INC.; DOE MANAGER
BRIAN; DOES 1 to 50,

Defendants.

No. 1:22-cv-0877 DAD DB

**STIPULATION TO DEFENDANT'S
MEDICAL/MENTAL
EXAMINATION OF PLAINTIFF
PURSUANT TO RULE 35 OF THE
FEDERAL RULES OF CIVIL
PROCEDURE AND ORDER**

IT IS HEREBY STIPULATED by and between Plaintiff JENNIFER GAXIOLA AGUAYO (“Plaintiff”) and Defendant WALMART INC. (“Defendant”), through their designated counsel, that Plaintiff will undergo a physical/mental examination pursuant to Rule 35 of the Federal Rules of Civil Procedure. Said

1 examination shall take place on **November 6, 2023, at 9:00 a.m.** and will be
2 conducted by Charles A. Filanosky, Ph.D., ABPP, located at 833 Market Street, Suite
3 809, San Francisco, California 94103.
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5 This examination will be conducted for the purpose of determining the nature
6 and extent of Plaintiff's alleged brain injury claimed to have been caused by the slip
7 and fall incident that is the subject of this litigation, the reasonableness and
8 necessity of the treatment that Plaintiff has received for said claimed injury, and the
9 necessity and appropriateness of any accommodations allegedly required to assist
10 Plaintiff with activities of daily living.
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12 The examination will consist of all necessary and customary examination and
13 testing required to make such a determination, including but not limited to obtaining
14 Plaintiff's relevant medical history, history of the incident in question, and
15 physical/mental examination, and evaluation Plaintiff's claimed brain injury. The
16 examination will not include any diagnostic test or procedure that is painful or
17 intrusive.
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19 The examination will be conducted by Dr. Filanosky, and not by any other
20 non-licensed personnel. No other person, other than Plaintiff and Dr. Filanosky will
21 be allowed to participate in the examination.
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23 Dr. Filanosky will be provided with a copy of this stipulation prior to the
24 examination.
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1 Plaintiff will appear at the examination as scheduled. Plaintiff is entitled to
2 leave the medical examination, without repercussion or liability, if the examination
3 has not begun within 30-minutes of the scheduled noticed time of the examination.
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5 IT IS FURTHER STIPULATED that, pursuant to Fed. R. Civ. Proc. 35(b)(1),
6 Defendant will provide to Plaintiff a copy of a written report, satisfying the
7 requirements of Fed. R. Civ. Proc. 35(b)(2) setting forth Dr. Filanosky's findings,
8 including diagnoses, conclusions, and the results of any tests.
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10 IT IS FURTHER STIPULATED that, pursuant to Fed. R. Civ. Proc. 35(b)(3),
11 following receipt of Dr. Filanosky's report, Plaintiff will produce all like reports of
12 all earlier or later examinations by Plaintiff's physicians of the same condition.
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14 IT IS FURTHER STIPULATED that, pursuant to Fed. R. Civ. Proc. 35(b)(5),
15 the failure to deliver reports pursuant to Rule 35(b) may result in the court excluding
16 the examiner's testimony at trial.
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18 By executing this Stipulation, Plaintiff does not waive her right to make any
19 and all objections (including, but not limited to, competency, relevancy, materiality,
20 propriety, admissibility, and foundation) of any conclusions, opinions, reports, or
21 other documents or information by Dr. Filanosky.
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1 IT IS SO STIPULATED
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4 DATED: October 10, 2023 Respectfully submitted,
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6 **O'HAGAN MEYER**

7 By: /s/ Theodore C. Peters
8 THEODORE C. PETERS
9 JOHN BEEMER
10 *Attorneys for Defendant*
11 *Walmart Inc.*

12 DATED: October 9, 2023 Respectfully submitted,
13
14 CARPENTER & ZUCKERMAN

15 By: /s/ Lance Behringer
16 LANCE BEHRINGER
17 *Attorney for Plaintiff*
18 *JENNIFER GAXIOLA AGUAYO*

19 **ORDER**

20 IT IS SO ORDERED.

21 DATED: October 26, 2023 /s/ DEBORAH BARNES
22 UNITED STATES MAGISTRATE JUDGE
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